

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

GERRON LINDSEY,

Defendant.

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ID No. 0002019769

ORDER

On Defendant Gerron Lindsay's Appeal from
Commissioner's Report and Recommendation

**Following *De Novo* Review,
Commissioner's Report and Recommendation
ACCEPTED.**

January 14, 2010

Elizabeth R. McFarlan, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Gerron Lindsey, *Pro Se*

JOHNSTON, J.

1. Defendant's fifth Motion for Postconviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law. The Commissioner issued the Report and Recommendation on September 28, 2009. The Report sets forth the procedural history, defendant's asserted grounds for Rule 61 relief, and analysis of the relevant facts and law. The Commissioner recommended that defendant's second motion for postconviction relief be denied.

2. On October 19, 2009, defendant filed an Appeal from Commissioner's Findings of Fact and Recommendations.

3. Defendant first asserts that a "critical witness provided false testimony at a hearing to sustain a guilty but mentally ill plea. There has been a miscarriage of justice and the court should withdraw the guilty plea in the interest of justice under Rule 61(i)(4)." Defendant also contends that his plea was involuntary because it was coerced by defense counsel, with whom defendant had a conflict of interest. These arguments clearly are procedurally barred. The narrow "miscarriage of justice" exception under Rule 61(i)(5) cannot circumvent the procedural bars in this case. These issues were fully considered, or could have been raised, on direct appeal and through the prior four postconviction relief motions. Defendant has failed to set forth any basis supporting his claim of

miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹

4. Defendant's third argument is based on the Delaware Supreme Court's holding in *Cooke v. State*, 2009 WL 2181678 (Del.). The rulings in *Cooke* are inapposite. In *Cooke*, the defendant consistently challenged his attorneys and complained to the trial judge that he vehemently disagreed with his counsel's guilty-but-mentally-ill defense. This Court and the Supreme Court repeatedly have found that Lindsey's guilty-but-mentally-ill plea was knowing, intelligent and voluntary.

5. The Court finds defendant's arguments to be wholly without merit. The underlying substantive arguments were considered and addressed in defendant's direct appeal, other four postconviction motions, and Commissioner's Report and Recommendation.

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THEREFORE, defendant's objections to the Commissioner's Report and Recommendation, entitled "Appeal from Commissioner's Finding of Fact and Recommendations," are hereby DENIED. The Court, having reviewed

¹Super. Ct. R., 61(i)(5).

de novo the Commissioner's Report and Recommendation pursuant to Superior Court Criminal Rule 62, hereby **ACCEPTS THE REPORT AND RECOMMENDATION IN ITS ENTIRETY. DEFENDANT'S FIFTH MOTION FOR POSTCONVICTION RELIEF IS HEREBY DENIED.**

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston